strained by forbidding him in the future from attending union meetings. We do not perceive any such far-reaching effect of the order. The order bans concerted continuance of the acts involved for the unlawful purpose of interfering with production in the situation instantly involved. The union bases this claim on the holding in *Near v. Minnesota*, 283 U. S. 697, 75 L. Ed. 1357. The claim is that as *Near v. Minnesota* protects freedom of the press, it also protects freedom of assembly and freedom of speech. Doubtless it does protect the latter two to the same extent that it protects the former. In *Near v. Minnesota*, supra, the publication of a newspaper was enjoined on the ground that its publication of libelous matter constituted a public nuisance and could be abated under a Minnesota statute. Such abatement was held violative of the provision of the clause of the Con- [fol. 301] stitution of the United States protecting freedom of the press. That no previous restraint whatever may be imposed is not declared by the decision in that case. It is said, 75 L. Ed. p. 1367:

"The objection has also been made that the principle as to immunity from previous restraint is stated too broadly, if every such restraint is deemed to be prohibited. That is undoubtedly true; the protection even as to previous restraints is not absolutely unlimited . . . the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government. The constitutional guaranty of free speech does not 'protect a man from an injunction against uttering words that may h-ve all the effect of force.' Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 55 L. Ed. 797, 805, 34 L. R. A. (NS) 874, 31 S. Ct., 492."

It does not follow that speech can not be restrained unless the restraint is irreconci-ble with the free speech declaration of *Thornhill v. State of Alabama*, 310 U. S. 87, 88, 84 L. Ed. 1093, 60 S. Ct. 737. It is stated in the opinion in the *Thornhill Case*, 84 L. Ed. p. 1103:

"It is true that the rights of employers and employees to conduct their economic affairs and compete with others for a share in the products of industry are subject to modifica-

tions or qualifications in the interests of the society in which they exist."

We consider that such restraint of speech and assembly as are here involved are within this concession.

It is also urged by the respondents that the order of the Board violates the commerce clause of the United States Constitution. This point was decided against them in *Wisconsin Employment Relations Board v. Rueping Leather Co.*, 228 Wis. 483, 279 N. W. 673. That decision was made under a preceding state employment relations act but the decision and the reason of it apply with equal force to the instant act.

The respondents cite *Hill v. Florida*, 325 U. S. 538, 89 L. Ed. 1782, as somehow contrary to our decision in the *Rueping Case*. We do not perceive that it is. The ques- [fol. 302] tion involved in that case was whether the Florida state law interfered with the right to collective bargaining granted by the National Labor Relations Act. Collective bargaining is not involved in this case. Concededly the union is the bargaining agent of the employees, certified by the National Labor Relations Board, and collective bargaining between the union and the employers was going on during the walkouts. *Alabama State Fed. of Labor v. McAdory*, 352 U. S. 450, 89 L. Ed. 1725, is also cited as contrary to the *Rueping Case*. That decision considers whether the decision of the state court in a declaratory judgment case declaring a state law regulating labor disputes constitutional would be entertained by the Supreme Court of the United States and decided that it would not. Every rule laid down in a decision of the United States Supreme Court as we understand it is to be limited as applying only to the particular facts on which it is based, and no case of that court is called to our attention that involves a situation like that involved herein. More nearly reaching the point here under consideration, perhaps, is the *Bethlehem Steel Case*, the decision of which was not handed down until April 7th last, after the briefs were prepared, and not called to our attention when the case was argued before us on April 11th. But here as in the *Florida Case*, supra, the point involved was whether the right of collective bargaining secured by the Federal Act was limited by the state act involved. Here as above stated collective bargaining is not in-

volved but is conceded to be in operation under the terms of the Federal Act. The point at issue in the *Bethlehem Steel Co. Case*, supra, was as we understand the decision, whether the State Labor Relations Board could under a state act on [fol. 303] petition of foremen in an industrial plant authorize formation of a unit for furthering their mutual interests and for collective bargaining which the National Labor Relations Board under a Federal Act had declined to authorize. The Federal Act placed in the National Labor Relations Board the power to determine whether the employees could form such a unit. Administration of the Federal Act was vested in the National Labor Relations Board. Administration of the state act was in the State Labor Board. Foremen, claiming the right as employees, applied to the National Labor Relations Board to form a unit for collective bargaining. The National Labor Relations Board declined to grant the application. The foremen then applied to the State Board to form a unit for such purpose under the state act. This the Board proceeded to do. Its action was upheld by the Court of Appeals and the decision of the Court of Appeals was reversed by the Supreme Court of the United States.

The dissenting opinion filed in the Supreme Court of the United States in the *Bethlehem Steel Co.* case took the position that the power delegated to the National Labor Relations Board to form the unit applied for was dormant because the National Labor Relations Board had not exercised it and because the National Labor Relations Board had not exercised the power the State Board had jurisdiction to exercise it. The opinion of the court was that the National Labor Relations Board—

". . . made clear that its refusal to designate foremen's bargaining units was a determination and an exercise of its discretion to determine that such units were not appropriate for bargaining purposes. (Citing cases). We therefore can not deal with this case as a case where Federal power has been delegated but lies dormant and unexercised". . .

[fol. 304] and the court held that the State Board was without jurisdiction. What the court held was that the National Labor Relations Board had exercised the jurisdiction delegated to it under the Federal Act by declining to designate the foremen as a bargaining unit. The declina-

tion was an exercise of its jurisdiction, just as much as granting it would have been. The jurisdiction vested in the National Labor Relations Board was to determine whether it would designate the foremen as a bargaining unit, and it exercised jurisdiction when it denied the application.

No such situation exists in the instant case as was involved in the *Bethlehem Steel Co. Case*, supra. In the first place no application has been made to the National Labor Relations Board to exercise any jurisdiction of the labor dispute here involved. The National Labor Relations Board not having exercised any jurisdiction of such labor dispute the State Board may exercise jurisdiction of it. No conflict is here involved. There was a direct conflict in the *Bethlehem Steel Co. Case*, supra. The National Labor Relations Board had determined that foremen could not form a unit for collective bargaining and the State Board said that they could and formed such a unit. The National Labor Relations Board's decision barred the State Board from taking any action at all.

In the second place the Wisconsin Employment Relations Board and the state's "Employment Peace Act" deal with unfair labor practices of employees, a subject not touched by the National Labor Relations Act. Therefore, the Wisconsin Employment Relations Board, in dealing with unfair labor practices of employees, deals with a subject not touched by the National Labor Relations Act or within the [fol. 305] jurisdiction of the National Labor Relations Board. There is therefore no conflict between the two acts and can be none between the two boards, as to the matter instantly involved. It follows that under the rule of the *Rueping Case*, supra, the Wisconsin Board had jurisdiction in the instant case. In this all the Justices of the Supreme Court of the United States seem to agree.

Respondents seem to argue that sec. 7 of the National Labor Relations Act by providing that "employees shall have the right to self-organization . . . and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection," gives to employees the right to engage in the "concerted activities" here involved. Not so. That section does not authorize employees to use concerted activities which are in violation of law. The activities which they are authorized to use in concert are those which are lawful. The activities employed by the

respondents in this case were activities which are unlawful under the law of Wisconsin. That only "concerted activities" to secure a lawful objective are protected is held in *Wisconsin Employment Relations Board v. Milk & Etc. Ass'n*, supra, in which certiorari was denied by the Supreme Court of the United States, 316 U. S. 668, and in *Retail Clerk's Union v. Wisconsin E. R. B.*, 242 Wis. 21, 6 N. W. (2d) 698. The same is in effect held in *Allen-Bradley Local v. Wisconsin E. R. B.*, 315 U. S. 740, 86 L. Ed. 1154.

If this is not true how are the states to police the activities of employees as well as employers? If the public interest is to be served there must be co-operation between Federal and state governments or the Federal government [fol. 306] must take over the preservation of peace and good order if it is to effectively protect interstate commerce.

Our so-called "Employment Peace Act" was enacted May 2, 1939, by Ch. 57, Laws of that year. It has now been in operation for eight years. So far as we can judge from its doings that have come before us for review it has been administered with reasonable success towards furthering the purpose of the act declared by sec. 111.01 (4):

". . . in order to preserve and promote the interests of the public, the employee and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated."

Particularly has the Board proved for Wisconsin residents and citizens a comparatively "convenient," "expeditious" and inexpensive tribunal for adjudication of their rights respecting labor practices. If, whenever a minute part of the product of a manufacturer gets into interstate commerce, because there is a federal statute dealing with labor practices of the employers but not dealing with labor practices of employees the commerce clause of the United States Constitution nullifies a state act dealing with labor practices of the employees that do not violate any provision of the Federal Act, then indeed little is left of the sovereignty of the states heretofore supposed to remain with them under Amendments IX and X of the United States Constitution. We do not mean to suggest that only a minute part of the product of the instant corporation entered into the interstate commerce. But if the contention of the respondents

on the ground now under consideration is upheld, then every order of the Board based on violation of unfair labor practices of employees may be ignored and there will be noth-
[fol. 307] ing left that the Board can effectively do, as some products of every manufacturer inevitably reach interstate commerce. We are not yet ready to believe that the Congress of the United States, the National Labor Relations Board or the Supreme Court of the United States, ever intent to deny, or ever considered that it did deny, power to the state legislature or to the Wisconsin Employment Relations Board the powers exercised by them appearing in the instant case. But however that may be, if the Wisconsin Employment Relations Board is to be in effect abolished by the judgment of a court that judgment will have to be rendered by the Supreme Court of the United States.

We consider that the above is sufficient to support the validity of the order of the Board here involved and to require reversal of the judgment of the circuit court with direction to enter judgments sustaining the orders and for enforcement of them.

By the Court.—The judgment of the circuit court is reversed in each case and the causes are remanded with directions to enter judgments in accordance with this opinion.

[fol. 308] And afterwards to-wit on the 1st day of July, A. D. 1947, the following dissenting opinion by Justice Wickhem was filed in words and figures following, that is to say:

[fol. 309] In Supreme Court, State of Wisconsin, August Term

Nos. 146—147

No. 146

International Union, U. A. W. A., A. F. of L., Local 232, et al., Respondents

v.

Wisconsin Employment Relations Board et al., Appellants

No. 147

Wisconsin Employment Relations Board et al., Appellant,

v.

International Union, U. A. W. A., A. F. of L., Local 232, et al., Respondents

Wickhem, J., dissenting:

I agree with the conclusion of the majority that the activities in which the union engaged were not a strike because they did not involve cessation of work until such time as the demands of the union were met or the tactic had failed. I further agree for whatever importance it may have that there was no strike vote in satisfaction of the requirements of sec. 111.06(2)(e) which provides as follows:

"(2) It shall be an unfair labor practice . . .

(e) To co-operate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech) boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike."

There was no disclosure to the men that the discretion to call meetings was considered or intended to constitute a strike and, indeed, it was the view of the officers at that time [fol. 310] that such conduct would not constitute a strike. I think, however, that the section itself is of no materiality

because it conditions the concomitants of a strike whereas here we deal with the question whether there was a strike. The only limitation upon the right to strike is that sec. 111.11 requires ten-day notice of intention to strike where perishable commodities are involved.

My disagreement is with the construction of sec. 111.06 (2) (h) which makes it an unfair labor practice to take unauthorized possession of the property of an employer or to engage in any concerted effort and interfere with production except by leaving the premises in an orderly fashion for the purpose of going on a strike. I concede that the literal language of the section offers some difficulties but it appears to me that the section is intended to deal solely with acts done upon the premises of the employer. Any other construction makes the prohibition of this section broader than the legislature can reasonably be supposed to have intended to make it. For instance, a concerted and permanent quitting of employment which certainly is not a strike, is prohibited upon this construction. Even a strike initiated by means other than leaving the premises for that very purpose would seem to fall within the condemnation of the section literally construed. So also would every conceivable interference with production, whether by acts on the premises or not. Upon this point it is significant that sections adjacent to sec. 111.06 (2) (h) deal specifically with picketing, boycotting, hindering or preventing the prosecution of employment, obstructing the entrance to or egress from place of employment, interference with the use of roads, engaging in secondary boycott, sabotage, preventing the obtaining, use or disposition of materials and other concerted efforts to interfere with production. From this it is a fair conclusion that the scope of sec. 111.06 (2) (h) is much narrower than that ascribed to it by the majority opinion. It was intended to characterize as an unfair labor practice any acts done upon the premises of the employer and tending to interfere with production [fol. 311] except that of leaving the premises in an orderly fashion. The fact that the exception is cast in terms of "leaving the premises" fortifies the conclusion that the operative portion of the section deals only with acts done upon the premises. The words in the section "for the purpose of going on strike" offer some difficulty but I think the purpose was to make a sharp distinction between the sit down which was popularly called a strike and the

sort of activity protected by the act. What the legislature meant was that a strike must be conducted off the premises. Any other construction offers what appears to me as insurmountable difficulties in the instant case. Part of the union's scheme here consisted of refraining from reporting at work and did not, of course, involve even going upon the premises. In order to deal with these facts under the majority view we must take the position either (1) that concerted failure to report for work is a violation of the section; or (2) that it is so closely related in effect and purpose to leaving the premises that it should be included within the prohibition of the section or (3) that the scheme of the union must be considered in its entirety and not in separate parts and that failure to report must be considered as an inseparable item of a single unfair labor practice. Any of these views, no matter how plausibly put, in my opinion amounts to a judicial extension of the scope of the section. The labor peace act was passed at a time when sitdown strikes and slowdowns were in vogue and it appears to me that the legislature meant specifically to deal with them and with all other acts done upon the premises of the employer in section 111.06 (2) (h), leaving to other sections the definition of other unfair practices amounting to concerted interferences with production. It is clear enough that the scheme involved in the present case was an invasion of the employer's rights of management and control. Such a scheme, however, had never been tried or thought of by unions and evidently was not in the minds of the legislature and perhaps for this reason was not designated an unfair labor practice. In any case, however, I think the section [fol. 312] cannot without judicial legislation be broadened to include this as an unfair labor practice.

It has been suggested that sec. 111.06 (3) has some bearing upon the case. This section provides:

"It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations any act prohibited by sub-sections (1) and (2) of this section."

I am of the view that this section has no application to the present case. It simply imposes upon associations of employers outside unions and other individuals the same

duties with respect to fair labor practices as are imposed by subsections (1) and (2) upon those having the relation of employer and employee. In any case the section requires that before an unfair labor practice can be found the persons referred to do some act specifically prohibited by subsections (1) and (2). That brings us back to our original question and offers no answer that can be of any use in this case.

Since the activity was not a strike I conclude that it is not a protected union activity. It was a breach of shop discipline and an invasion of the employer's rights for which the employer may visit upon the participants the penalty of discharge or lesser disciplines without committing an unfair labor practice under the act.

There is one further matter. It is said that paragraph (a) of the board's order goes no further than to prohibit the holding of union meetings for the purpose of interfering with production. The order requires the employees to cease and desist from interfering with production "by arbitrarily calling union meetings, inducing work stoppage during regular scheduled working hours; *or engaging in any other concerted effort to interfere with production of the complainant except by leaving the premises in an orderly manner for the purpose of going on strike.*" The italicized [fol. 313] portion of the order is in addition to the portion which deals with the matter of union meetings. As to just what it may prohibit is open to question. It is as broad as the statute itself and appears to me to be more extensive than the acts charged in this case. It seems to me that it should be deleted.

I am authorized to state that Mr. Chief Justice Rosenberry and Mr. Justice Rector concur in this opinion.

[fol. 314] And afterwards to-wit on the 21st day of June, A. D. 1947, the following motion for rehearing was filed by respondents, in words and figures following, that is to say:

[fol. 315] STATE OF WISCONSIN IN SUPREME COURT, AUGUST TERM, 1946

No. 146

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John M. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgerald, as Members of the Wisconsin Employment Relations Board; and Briggs & Stratton Corporation, a Corporation, Appellants

No. 147

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John M. Corbett, Oliver Dostaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Respondents,

MOTION FOR REHEARING

Now come the Respondents, International Union, United Automobile Workers of America, Local 232, et al., and respectfully move this Honorable Court to grant a rehearing in the above entitled cases, on the grounds and for the reasons to be assigned in the printed brief which will be filed in support hereof.

Dated at Milwaukee, Wisconsin, this 19th day of June, A. D. 1947.

Padway, Goldberg & Previant, Attorneys for Respondents.

[fol. 316] And afterwards to-wit on the 21st day of June, A. D. 1947, an order was entered in this Court retaining the record in this cause until the final determination of said motion, in words and figures following, that is to say:

MILWAUKEE CIRCUIT COURT

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, et al., Respondents

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Appellants

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, et al., Respondents

The said respondents having moved for a rehearing in these causes, it is now here ordered that the records be retained in this Court, until the final determination of said motions.

[fol. 317] And afterwards to-wit on the 9th day of September, A. D. 1947, the same being the 3rd day of said term, the motions were denied in words and figures following, that is to say:

MILWAUKEE CIRCUIT COURT

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, et al., Respondents

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Appellants

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, et al., Respondents

The Court being now sufficiently advised of and concerning the motions of the said respondents for a rehearing in these causes, it is now here ordered that said motions, be, and the same are hereby, denied without costs.

[fol. 318] STATE OF WISCONSIN IN SUPREME COURT

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, et al., Respondents;

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, et al., Appellants

WISCONSIN EMPLOYMENT RELATIONS BOARD, Appellant,

vs.

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232, et al., Respondents

I, Arthur A. McLeod, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing is a true and correct transcript of all the record and proceedings now on file and of record in my office with all things concerning the same in the above entitled causes, in this Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Madison, this 26th day of January, A. D. 1948.

Arthur A. McLeod, Clerk of Supreme Court, Wisconsin. (Seal.)

[fol. 319] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. —

INTERNATIONAL UNION, U. A. W. A., A. F. OF L., LOCAL 232; Anthony Doria, Clifford Matchey, Walter Berger, Erwin Fleischer, John M. Corbett, Oliver Postaler, Clarence Ehrman, Herbert Jacobsen, Louis Lass, Petitioners,

v.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, Henry Rule and J. E. Fitzgibbon, as Members of the Wisconsin Employment Relations Board; and Briggs & Stratton Corporation, a Corporation

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 7, 1948.

Frank Murphy, Associate Justice of the Supreme Court of the United States.

Dated this 3rd day of December, 1947.

[fol. 306] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 580

ORDER ALLOWING CERTIORARI—Filed March 15, 1948

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 307] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 581

ORDER ALLOWING CERTIORARI—Filed March 15, 1948

The petition herein for a writ of certiorari to the Supreme Court of the State of Wisconsin is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1947.

No. 580 - 581

INTERNATIONAL UNION, U. A. W. A., A. F. of L., LOCAL 232; ANTHONY DORIA, CLIFFORD MATCHEY, WALTER BERGER, ERWIN FLEISCHER, JOHN M. CORBETT, OLIVER DOSTALER, CLARENCE EHRMANN, HERBERT JACOBSEN, LOUIS LASS,
Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, as Members of the Wisconsin Employment Relations Board; and BRIGGS & STRATTON CORPORATION, a Corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the State of Wisconsin

and

BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES.

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No. .....

INTERNATIONAL UNION, U. A. W. A., A. F. of L., LOCAL 232; ANTHONY DORIA, CLIFFORD MATCHEY, WALTER BERGER, ERWIN FLEISCHER, JOHN M. CORBETT, OLIVER DOSTALER, CLARENCE EHRMANN, HERBERT JACOBSEN, LOUIS LASS,
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WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, as Members of the Wisconsin Employment Relations Board; and BRIGGS & STRATTON CORPORATION, a Corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Justices of the Supreme Court of the United States:

The above named Petitioners respectfully petition for a Writ of Certiorari to review the decision of the Supreme Court of Wisconsin, 250 Wis. 550, rendered June 10, 1947, Motion for Rehearing denied September 9, 1947, reversing a judgment of the Circuit Court of Milwaukee County, Wisconsin, with directions to enter judgments sustaining the order of the Wisconsin Employment Relations Board, enjoining and restraining your Petitioners from engaging in certain activities, and for enforcement of said order. (The decision of the Wisconsin Supreme Court may be found at pages 287-307 of the Record.)

SUMMARY STATEMENT OF MATTER INVOLVED.

[The Record in the court below was printed in narrative form as an Appendix. This Appendix has been filed herein in lieu of the original record under Rule 38 (7) of this court. References to the Record (R.) are references to the pages of that Appendix, except as to the proceedings in the State Supreme Court, in which case Record references are to the supplemental Record printed by the Clerk of this Court.]

This case involves the right of employees to withhold their services for periods of one day or less, and at irregular intervals of time, in furtherance of collective bargaining demands, and in the absence of a union contract.

The Briggs & Stratton Corporation (hereinafter referred to as the "Company" or the "Employer") operates two manufacturing plants in Milwaukee and engages the services of approximately 2000 employees for hire in the State of Wisconsin (R. 154). The International Union, U. A. W. A., A. F. of L., Local 232 (hereinafter called the "Union"), represents the production workers of the company as their collective bargaining agent having been duly certified by the National Labor Relations Board under the provisions of the National Labor Relations Act, as the collective bargaining representative in March, 1938 (R. 155-158).

Since the certification the Company and the Union entered into various collective bargaining agreements, the last of which expired on July 1, 1944 (R. 212). Due to the inability of the parties to agree upon the terms of a new agreement in June, 1944, the dispute was submitted to the National War Labor Board operating under authority of the War Labor Disputes Act of 1943 and Ex-

ecutive Order No. 9017. The National War Labor Board entered its Directive on December 20, 1945. This order was received by the Union on or about December 21, 1945, and by the Company on or about January 17, 1946 (R. 155-156). From the time of the entry of the Directive Order of the National War Labor Board until hearing before the Wisconsin Employment Relations Board in the present proceedings, the Company made no effort to comply with any of the terms of such order, although the Union sought to induce the Company to do so (R. 171).

After V-J Day, August 15, 1945, the Union raised new demands relating primarily to wages (R. 157).

On November 3, 1945, at a special meeting, after discussion of the apparent stalemate of the negotiations between the Union and the Company, a motion was unanimously passed empowering the Executive Board of the Union to call a special meeting during working hours at any time as such Board saw fit (R. 179). The membership is the highest authority of the Union, and it is the duty of the officers to carry out the directions and desires of the members (R. 174). It was agreed at such meeting that such stoppages would be so handled so as not to create any spoilage of material or damages.

Subsequently, a number of such stoppages for the purpose of attending union meetings were called from time to time. The first one occurred on November 6, 1945 (R. 158). No advance notice was given to the Company prior to such stoppages. Stoppages occurred usually during the first shift, which operated at the east plant from 8 A. M. to 5 P. M., and at the west plant from 7 A. M. to 3:30 P. M. The employees would leave some time during the first shift (sometimes as early at 8:30 A. M., or at late as 1:30 P. M.) and would not return that day, but would report back to work the following day for the regularly scheduled

shift. The employees on the second shift, with working hours from 3:30 P. M. to 12 Midnight at both plants, sometimes did and sometimes did not report to work on the days the employees on the first shift left. On days when they reported to work the employees on the second shift worked their full shift (R. 158-160, 181). On days when most second-shift employees did not report to work, they would report the following day for their regularly scheduled hours (R. 158-159). No disciplinary action was taken by the company.

On February 15th, 1946, after several stoppages, a secret ballot was taken at a special meeting of the union. This secret ballot authorized the adoption and continuance of special meetings at any time. 1174 employees voted in favor of the continuance and 7 voted in opposition (R. 209). The vote was taken for the purpose of complying with the Strike-Vote provision of Chapter 111.06 (2) (e), Wisconsin Statutes, in the event the Wisconsin Employment Relations Board should hold that to be necessary (R. 209). The company was advised during the course of negotiations, and while the stoppages were taking place, that further walkouts would take place if the demands of the union were not met (R. 166).

The work stoppages affected production, but this effect was not as great as the effect of one lengthy strike. The company admitted that these stoppages by the union were less costly to it than a full-time continuous strike would have been (R. 171).

Union officials claimed that the stoppages were for the purpose, among other things, of interfering with the production of the company so as to induce and compel the company to agree to union demands for inclusion in a collective bargaining agreement which was then in the process of negotiation (R. 181); of keeping the workers

on the payroll, except for the deductions which the company took for the brief periods of the stoppage, and so avoid the hardship of a protracted strike (R. 177); of preventing company-inspired rumors from wrecking the solidarity of the employees (R. 181); of conveniently getting all members of the union together during the work week rather than on Sundays; and for the purpose of putting the company on the defensive in the collective bargaining process (R. 166, 177). The meetings were attended by a preponderant majority of those working (R. 181). The officials of the union never tried to name the activities, either by use of the term "strike" or otherwise (R. 176-177).

The company filed its complaint with the Wisconsin Employment Relations Board charging unfair labor practices by the union in violation of Chapter 111, Wisconsin Statutes (1945).

After a hearing the Board made findings of fact, conclusions of law, and entered an order, which insofar as is pertinent here, provided that the union and its officers cease and desist from

> "(a) engaging in concerted efforts to interfere with production and arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours or engaging in any other concerted effort to interfere with production of the complainant, except by leaving the premises in an orderly manner for the purpose of going on strike;" (R. 127).

Two separate proceedings were begun in the Circuit Court for Milwaukee County, a Petition for Review by the Union, and a Petition for Enforcement by the Board (R. 118, 137). The proceedings were consolidated by stipulation. The Circuit Court, in its opinion entered October 18, 1946, ruled that Paragraph (a) of the Board's cease

and desist order quoted above be vacated, and that the Board's Petition to enforce this portion of the order be denied (R. 115). A single judgment was entered accordingly in the Circuit Court on October 30, 1946 (R. 137). The Wisconsin Employment Relations Board and the Company appealed from that portion of the judgment vacating part of the Board's order. The Wisconsin Supreme Court reversed the judgment of the Circuit Court of Milwaukee County, and directed the Circuit Court to enter judgment enforcing the order of the Board. Motion for rehearing was denied.

STATEMENT AS TO JURISDICTION.

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1925, Section 237-b, 28 U. S. C. A., Section 344-b, giving jurisdiction to this Court:

> "to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by appeal any cause wherein a final judgment or decree has been rendered and passed by the highest court of a state in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any state on the ground of being repugnant to the Constitution or laws of the United States; or where any title, right, privilege or immunity is especially set up or claimed by either party under the Constitution. * * *"

In this case the validity of the Statutes of the State of Wisconsin, to-wit: Sections 111.01 through 111.19 Wisconsin Statutes 1945, particularly Sections 111.04, 111.06 (2) (e) and (h) and 111.15, and a direction to enter judgment enforcing an order which is purportedly based on such

statutes is drawn in question upon the ground that such Statutes, order and judgment on their face, and as construed in the opinion and judgment of the Supreme Court of the State of Wisconsin, are repugnant to Article I, Section 8, and Article VI of the United States Constitution, in that they are contrary to and in violation of rights conferred and duties imposed by superior federal legislation, to-wit, the National Labor Relations Act, 49 Stats. 449, 29 U. S. C., Paragraphs 151-166; Section 1 of the Thirteenth Amendment to the Constitution of the United States, in that they impose involuntary servitude, and Section 1 of the Fourteenth Amendment to the United States Constitution, in that they deprive petitioners of liberty or property without due process of law, deprive petitioners of the equal protection of the laws, and more particularly deny to the petitioners freedom of speech and assembly.

The decision of the Wisconsin Supreme Court was in favor of the validity of the Statutes and Order. The Supreme Court of the State of Wisconsin rendered its decision herein on June 10, 1947, and denied a motion for rehearing on the 9th day of September, 1947.

On December 3, 1947, Mr. Justice Murphy, by appropriate order, extended the time for filing of this Petition until the 7th day of February, 1948 (R. ...).

Said opinion of the Supreme Court of the State of Wisconsin, the last resort of all causes in the State of Wisconsin, is officially reported in 250 Wis. 550 (R. 287-307).

The Petitioners argued before the Wisconsin Employment Relations Board (R. 149-151), before the Circuit Court of Milwaukee County (R. 135-136), and before the Supreme Court of the State of Wisconsin (see Decision, R. 287-307); that Section 111.04 and Section 111.06 (2) (e) and (h) of the Wisconsin Statutes, and the Order of the Board based on the Wisconsin Statutes, as construed, were unconstitutional, void, and of no effect whatsoever be-

cause they were repugnant to Article I, Section 8, and Article VI of the United States Constitution, in that they were contrary to and in violation of the rights conferred and duties imposed by superior federal legislation; Section 1 of the Thirteenth Amendment to the Constitution of the United States, in that they imposed involuntary servitude, and Section 1 of the Fourteenth Amendment to the United States Constitution, in that they deprived petitioners of liberty and property without due process of law, deprived petitioners of the equal protection of the laws, and more particularly denied to the petitioners freedom of speech and assembly.

The Federal question of whether the Wisconsin Statutes in question and the order and judgment purportedly based on such Statutes violated the Constitution of the United States thus was raised before every tribunal before which argument was heard. The Supreme Court of the State of Wisconsin specifically held that neither the Wisconsin Statutes nor the Order based on such Statutes, as construed, deprives the Petitioners of any rights guaranteed under the provisions of the Constitution of the United States. The court said:

> "The constitutional point of involuntary servitude here argued was in issue in **Western Union Telegraph Company v. International Brotherhood of Electrical Workers (D. C.), 2 Fed. (2d) 993** * * *. When it is (an affirmative) step in a concerted plan to do an unlawful act it may be enjoined."
>
> * * * * * * * *
>
> "It does not follow that speech cannot be restrained unless the restraint is irreconcilable with the free-speech declaration of **Thornhill v. Alabama, 310 U. S. 88.** * * * We consider that such restraint of speech and assembly as are here involved are within this concession."
>
> * * * * * * * *

"It is also urged by the Respondents that the order of the Board violates the Commerce Clause of the United States Constitution, Section 8, Article I. This point was decided against them in **Wisconsin Labor Relations Board v. Rueping L. Company, 228 Wis. 473.** The decision was made under a preceding State Employment Relations Act, but the decision and the reason of it apply with equal force to the instant Act."

Thus the Wisconsin Supreme Court has taken the position that mere work stoppages in connection with a labor dispute, but not associated with any violence, boycotting, or picketing, are validly restrained by the order and judgment directed to be entered enforcing such order; that such restraints are supported by the provisions of Chapter 111, Wisconsin Statutes 1945, and that the question of the violation of constitutional guarantees alleged by the Petitioners to have been breached by the order should be determined adversely to the Petitioners.

Some of these cases relied on by Petitioners in the Courts below are:

1. **United States v. Hutcheson, 312 U. S. 219, 62 S. Ct. 463;**
2. **Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736;**
3. **Near v. Minnesota, 283 U. S. 697, 75 L. Ed. 1357;**
4. **Hill v. Florida, 325 U. S. 538, 65 S. Ct. 1373;**
5. **Allen Bradley Local No. 1111 et al. v. Wisconsin Employment Relations Board, 315 U. S. 740, 62 S. Ct. 820;**
6. **Thomas v. Collins, 323 U. S. 516, 65 S. Ct. 315.**

A copy of the entire record in this case as certified to be true and correct by the Clerk of the Supreme Court of the State of Wisconsin is hereby furnished and made

a part of this application in compliance with Rule 38, Paragraph 1, of the Rules of this Court.

The State Statutes involved are set forth in Appendix A, attached to this petition at page 45.

QUESTION PRESENTED.

The following Federal question raised and argued before the Supreme Court of the State of Wisconsin is also presented here:

Do an order and judgment, and any statutes upon which such order or judgment are based, violate Article I, Section 8 and Article VI, of, and the Thirteenth and Fourteenth Amendments to the Constitution of the United States, insofar as such order and judgment and the statutes restrain a labor union, its officers and members from leaving the premises of an employer or refusing to enter upon such premises for short periods of time and at irregular intervals for the purpose of interfering with production in support of collective bargaining demands?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The direction of judgment by the Supreme Court of the State of Wisconsin is in conflict with the decisions of this Honorable Court in **United States v. Hutcheson, 312 U. S. 219, 62 S. Ct. 463; Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736; Near v. Minnesota, 283 U. S. 697, 75 L. Ed. 1357; Hill v. Florida, 325 U. S. 538, 65 S. Ct. 1373; Allen Bradley Local No. 1111 et al. v. Wisconsin Employment Relations Board, 315 U. S. 740, 62 S. Ct. 820; Thomas v. Collins, 323 U. S. 516, 65 S. Ct. 315.**

For the first time there is being presented to this Court the question of the constitutionality of state legislation, as construed by the State Supreme Court, which attempts to prevent the peaceful activity of short-time stoppages

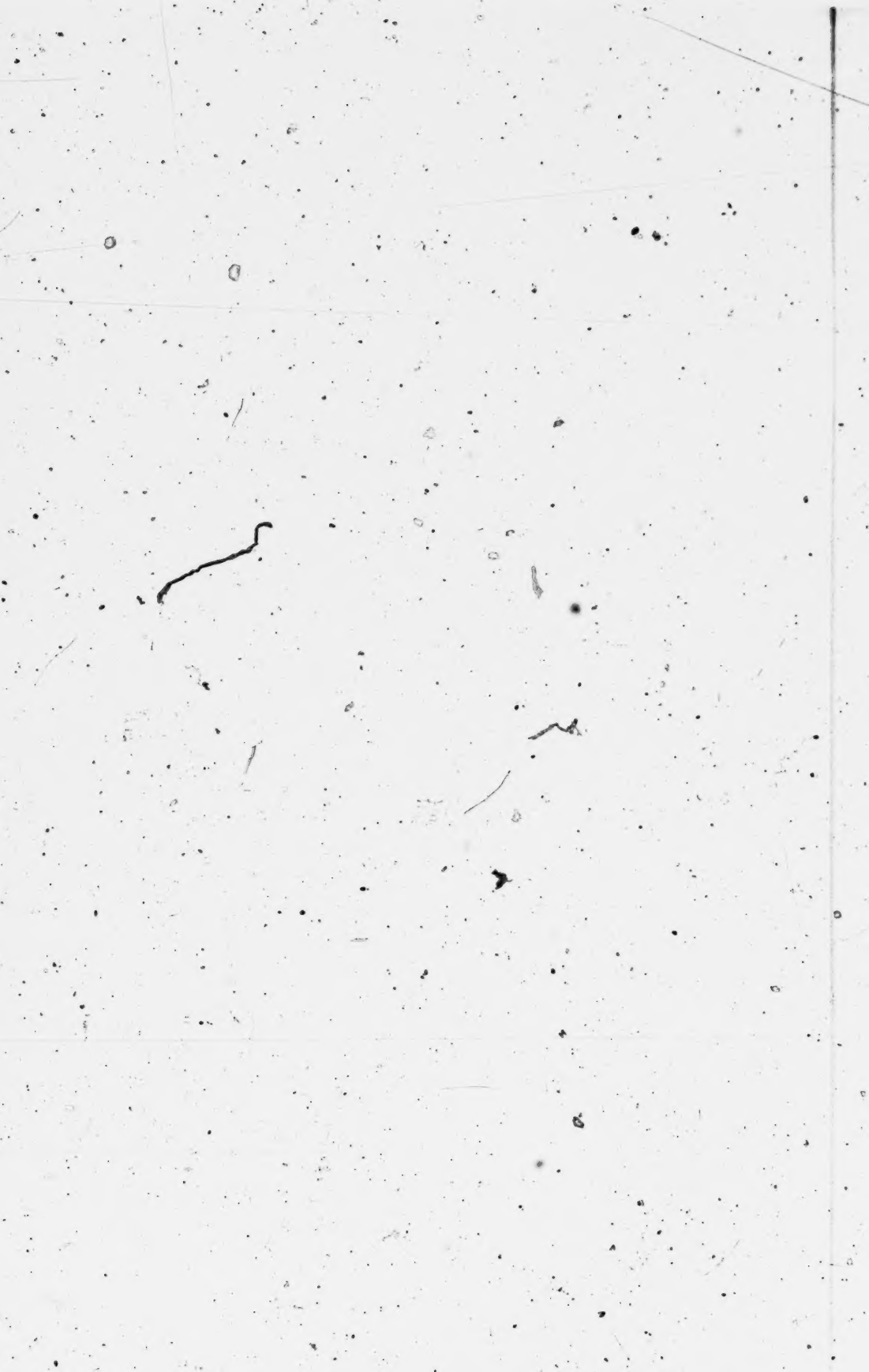
of work as not constituting a strike, as such term is used in the State Statute, and which limits work stoppages and union assemblage to a situation in which the majority of employees in a suit have by secret ballot called a strike as such term is narrowly and inaccurately defined by that Court. And in the face of federal legislation which firmly guarantees not only the right to strike, but also to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection (National Labor Relations Act, Sections 7 and 13).

PRAYER FOR WRIT.

Wherefore, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of the State of Wisconsin, commanding that Court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered 146 and 147 and entitled **International Union, U. A. W. A., A. F. of L., Local 232, et al., v. Wisconsin Employment Relations Board et al.**, and **Wisconsin Employment Relations Board v. International Union, U. A. W. A., A. F. of L., Local 232, et al.**, and that the judgment of the Supreme Court of the State of Wisconsin may be reviewed by this Honorable Court, and that your Petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

J. ALBERT WOLL,
HERBERT S. THATCHER and
ALFRED G. GOLDBERG,
Counsel for Petitioners.

DAVID PREVIANT and
SAUL COOPER,
Of Counsel.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1947.

No. .....

INTERNATIONAL UNION, U. A. W. A., A. F. of L., LOCAL 232; ANTHONY DORIA, CLIFFORD MATCHEY, WALTER BERGER, ERWIN FLEISCHER, JOHN M. CORBETT, OLIVER DOSTALER, CLARENCE EHRMANN, HERBERT JACOBSEN, LOUIS LASS,
Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, L. E. GOODING, HENRY RULE and J. E. FITZGIBBON, as Members of the Wisconsin Employment Relations Board; and BRIGGS & STRATTON CORPORATION, a Corporation,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of the State of Wisconsin is reported in 250 Wis. 550 (R. 287-307).

JURISDICTION.

The statutory provision believed to sustain the jurisdiction of this Court is Title 28, U. S. C. A., Section 344-b [Judicial Code, Section 237 (b), as amended by the Act of February 13, 1925].

As seen in the jurisdictional statement in the foregoing petition, the constitutional objections to the legislation upon which the order and judgment forbidding the calling of union meetings and work stoppages are based, were raised and argued before every tribunal, including the Wisconsin Employment Relations Board, the Circuit Court of Milwaukee County, and the Supreme Court of the State of Wisconsin, the court of last resort for all causes in the state. The constitutional objections were discussed and passed upon by the Supreme Court of the State of Wisconsin, which court determined that such objections were not available to Petitioners, and that the legislation and the judgment did not invade any constitutional rights.

STATEMENT OF THE CASE.

A summary statement of the case appears in the Petition for Writ of Certiorari, which, in the interest of brevity, is incorporated herein by reference.

SPECIFICATION OF ERRORS.

The Supreme Court of the State of Wisconsin erred in the following respects:

In reversing the judgment of the Circuit Court for Milwaukee County, Wisconsin, which judgment vacated part of the order of the Wisconsin Employment Relations Board, and in directing entry of judgment and enforcing the entire order, which, as construed by the Wisconsin Supreme Court, prohibited the Petitioners from engaging in peaceful work stoppages and attending union meetings, during the course of a labor dispute arising out of collective bargaining negotiations.

ARGUMENT.

I.

THE STATUTES, AND THE ORDER AND JUDGMENT OF THE SUPREME COURT BASED THEREON, ARE UNCONSTITUTIONAL UNDER THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

It has been claimed by the Petitioners throughout the proceedings that the order is a limitation upon the federal right to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection, as prescribed in the Act of July 5, 1935, c. 372, 49 Stats. 449, 29 U. S. C., Paragraphs 151-166, known as the National Labor Relations Act, and is therefore in violation of Article I, Section 8, and Article VI of the United States Constitution. That Petitioners are within the class of employees whose activities are protected by the National Act is undisputed inasmuch as the National Labor Relations Board previously assumed jurisdiction of the employment relations herein involved, and certified the petitioning union as the duly selected collective bargaining agent. And that the order and judgment herein entered affects employees as members of the union is demonstrated by the Wisconsin Supreme Court decision wherein it is stated that the order

> "* * * operates on the individual members of the union as well as upon the union's officers, although the individual members are not named as defendants. The union is only an association of its members, and whatever is forbidden to the union is forbidden to its members."

A.

The Statutes, Order and Judgment Deprive Petitioners of Rights Secured by Paragraph 7 of the National Labor Relations Act

The order of the Board, and the direction of enforcement by the Wisconsin Supreme Court, violate the rights of the Petitioners, as set forth in Paragraph 7 of the National Labor Relations Act, which provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, **and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.**" (Emphasis ours.)

It is undisputed in the record that the concerted activities engaged in by the employees was "for the purpose of collective bargaining, or other mutual aid or protection." The Wisconsin Employment Relations Board did not and could not find to the contrary. It specifically found in Finding of Fact No. 8 that the activities were to "induce and compel the complainant to accede to the demands of the union to be included in the collective bargaining agreement being negotiated between the parties" (R. 124-125). And the Supreme Court of Wisconsin affirmed such finding, both by express reference, and in the following language:

> "The action of the employees was a concerted effort to, and did, interfere with production and was taken as economic pressure to compel the company to comply with the union's demands respecting the terms of the contract being negotiated."

Its judgment enforcing the order of the Board therefore is in flat derogation of the above enumerated rights found in the National Labor Relations Act.

The claim of conflict and inconsistency between judgments of the Wisconsin Court and the National Labor Relations Act has been made before to this court. Here, however, there is a flat inconsistency, and therefore the decision of this court in the case of **Allen Bradley Local No. 1111 et al. v. Wisconsin Employment Relations Board et al., 315 U. S. 740,** is directly pertinent insofar as the instant case lies within that realm which the court said the **Allen Bradley Case** did not embrace. In the **Allen Bradley Case** this court, in rejecting the appeal of the union, pointed out that the order about which the union complained was an order which merely prohibited mass picketing, threats and violence, and that the action of the Board neither

> "impairs, dilutes, qualifies or in any respect subtracts from any of the rights guaranteed and protected by the Federal Act."

And the court further stated:

> "It has not been shown that any employee was deprived of rights protected or granted by the Federal Act or that the status of any of them under the Federal Act was impaired."

In the instant case, however, there is a deprivation of rights protected or granted by the Federal Act, namely, the above quoted right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

That the action of the State Supreme Court in this case is a deprivation of rights protected or granted by the Federal Act is illustrated by the holdings in the following cases that the mutual aid and concerted activities protected by the Act include the right to strike or quit.

It was held in **Carter Carburetor Corp. v. N. L. R. B., 140 Fed. (2d) 14,** that:

"Section 7 (of the National Labor Relations Act) gives employees the right 'to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.' This 'mutual aid' and 'concerted activities' include, we think, the right to join other workers in quitting work in protest over the treatment of a co-employee, or supporting him in any other grievance connected with his work or his employer's conduct (citing cases)."

In the case of **National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1,** sustaining the constitutionality of the National Labor Relations Act, this court stated:

"Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right, but could safeguard it."

Similarly, in **National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., 303 U. S. 261,** this Court stated:

"The history of the act and its language show that its ruling purpose was to protect interstate commerce by securing to employees the rights established by Paragraph 7 to organize, bargain collectively through representatives of their own choosing, and to engage in concerted activities for that and other purposes. **National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1, 23, 33.** This appears both from the formal declaration of the policy in Paragraph 1 of the Act, **N. L. R. B. v. Jones and Laughlin, S. Ct.,** supra, **22-24, and from Paragraph 7,** in its declaration of the policy which, in conjunction with Paragraph 10, Section c, it adopts as the controlling guide to administrative action."

This judgment of the State Supreme Court is not in conformity with the rights of the Petitioners, as established by Section 7 of the National Labor Relations Act. In conforming, it should yield to the greater superior authority of the federal law.

B.

The Statutes, Order of the Board, and Judgment of the Court Also Violate Section 13 of the National Labor Relations Act.

The provisions of Section 13 of the Wagner Act, as they were in effect at the time of the proceedings herein involved, were as follows:

> "Section 13. Nothing in this act shall be construed so as to interfere with, impede, or diminish in any way the right to strike."

If in fact the activities engaged in by the Petitioners were strike activities, the injunctive action taken by the State of Wisconsin then violates Section 13 of the National Labor Relations Act; and since Congress has vested in the National Labor Relations Board jurisdiction of the labor relations of employers in interstate commerce, and has dealt specifically with the right to strike, and other concerted activities, the State is impotent to act in any manner inconsistent with the National Law and Policy. Since by Section 13, Congress has declared that the right to strike shall not be interfered with, impeded, or diminished, the State Order or judgment which does impede a strike is null and void as conflicting with the Federal Act.

Work Stoppages Engaged in for Short Periods of Time at Intermittent and Irregular Intervals Are "Strikes."

The stoppages involved in the instant case are "strikes" despite the fact that the Petitioners in the proceedings below did not name them as such,[1] and despite the fact that the Supreme Court of the State of Wisconsin did not construe these stoppages as coming within its own definition.

The Wisconsin Supreme Court of course has said that these activities are not strikes, and we assume that it will be urged in this court that since they are not strikes as defined by Wisconsin law, there can be no valid argument made on the right to strike.

But Wisconsin may not and cannot by the juggling of labels, as applied to undisputed facts, deprive its citizens of federally-guaranteed rights, and a strike remains a strike in spite of whatever other name Wisconsin chooses to call it. Any definition of strike embodies four elements: (a) a leaving of employment; (b) by mutual understanding; (c) by a body of workmen; and (d) to enforce compliance with demands made on an employer **(Webster's International Dictionary, Second Edition, Unabridged, 1944).**

All the elements necessary to the existence of a strike were present here.

a. **There was an act of quitting.**

There is no dispute about the fact that the employees stopped their work and walked off the job, and in some in-

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1 This is explained by the testimony of Anthony Doria that the union had not tried to name the activities, and that the purpose of this type of activity was to stave off a full-time strike because of the hardships of having working men out on the street for long periods of time (R. 176-177).

stances did not report for work at all. The period of time for which they quit is not important, nor does any standard definition of the term "strike" set forth any prerequisite of time. It is submitted that the act of actually leaving the employment is a sufficient suspension of the employer-employee relationship to meet the element of quitting, which is in the definition of "striking."

It is difficult to extract from the Wisconsin Court's opinion the actual basis for its determination that there was no strike.

On the one hand it is emphasized that the withdrawing from employment, which characterizes a strike "implies something more than the temporary quitting with intent to resume commencement of work on the next shift." It is then stated that such withdrawal "implies a continuous withdrawal until the object of the strike is attained or the strike abandoned," and it is stated that there must be a "continuance of unemployment."

On either count the court is wrong. On the question of "intent", it is the intent to resume employment which distinguishes a strike from a voluntary quit. The important intent in any concerted stoppage is the purpose of the quit rather than the length of the leaving of employment. The purpose of the temporary quits in this case is undisputed. It was, to use the Wisconsin Court's own language:

> "economic pressure to compel the company to comply with the union's demands respecting the terms of the contract being negotiated".

The employees, of course, hoped that one temporary quit would accomplish this purpose. But they were prepared to engage in a series of such quits, if necessary, to attain this end. The company was so advised (R. 166). There was, therefore, present here the necessary intent to

enforce collective bargaining demands, which is characteristic of a strike.

And, clearly, the court below is wrong when it seeks to interject a test of **continuous** unemployment, without an effort to return, until the demands are either met or abandoned.

This interpretation places a premium on length of unemployment. If this theory were correct it would nullify the short-lived strike. It would attempt to say that if employees have been defeated in their demands and have had to return to work without a satisfaction of their demands, but have returned to work with the reservation that they would try other means to persuade the employer to meet their demands (which is exactly what happened here), then the period during which they had a stoppage of work was not a strike. Certainly employees may engage in a series of strikes over a period of time, the first several of which may not yield any material results, but all of which, when taken together, will ultimately lead to the signing of an agreement. And even if we were to assume that an intent to return to work, regardless of whether the demands have been met, and without abandoning the demands, removes each work stoppage individually from the classification of "strike" and takes it out of the protection afforded to concerted activities, the fact remains that we do have here, as to each such stoppage, the additional and necessary intent to suspend employment until demands are met. It is absurd to assume, in the face of the record here, and in light of every-day realities, that it was not contemplated, as to each stoppage, that its duration would be more limited than originally anticipated, or that it would be the last stoppage if the employer yielded and signed an agreement. The employees were prepared to stay out of employment for only a stated period of time, even if

their demands were not met, but they were also prepared to terminate the stoppage and to resume employment upon the meeting of their demands if such contingency took place before the stated period of time. So, there was present here the basic intent, not only as to the whole series of stoppages, but as to each individual stoppage to return to work earlier, upon granting of the demands or the signing of an agreement.

b. **The quitting was done by mutual understanding**

and

c. **By a body of workmen.**

The presence of these two elements is not disputed in this case, and requires no argument.

d. **The purpose of the action was to enforce compliance with demands made on the employer.**

The record is clear that the stoppages were for the purpose, among other things, of enforcing the collective bargaining demands made upon the employer by the union. There can be no question that demands were made prior to the time of the stoppages since negotiations were in progress in respect to these demands, and since the Wisconsin Employment Relations Board did so find in its Finding of Fact No. 8, quoted earlier. The decision of the Wisconsin Supreme Court, while adopting such finding, completely ignores it in its attempt to call a strike not a strike.

The Activities Conform to Other Definitions of Strikes.

The Petitioners' activities were strikes as such terms are used and defined under the old and new Labor Relations Act, and the judgment therefore is in derogation of

rights assured by Section 13 of the National Labor Relations Act.

In **National Labor Relations Board v. Clinton Woolen Manufacturing Co., 141 Fed. (2d) 753,** the Sixth Circuit Court of Appeals held as follows:

> "The walk-out, **for the purpose of holding an organizational meeting,** was not only without consent of the respondent but in violation of its express instructions to remain. It is urged that by failing to discipline its employees for leaving the plant, the respondent engaged in an unfair labor practice. But discrimination against employees for union activity is condemned by the Act. **A walkout is, in practical aspect, a strike,** and strikers may not be discharged for exercising their inherent right to strike. **N. L. R. B. v. Fansteel Metallurgical Corp., 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, 123 A. L. R. 599.**" (Emphasis ours.)

So here we have a Federal Circuit Court of Appeals holding that a walk-out to attend an organizational meeting was a strike, pursuant to the Federal law which at that time did not specifically define the term.

Moreover, since the Wagner Act has been amended after the occurrence of the acts herein described, the term "strike" has been defined[2] as

> "Any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees."

This definition, rather than limiting the meaning of the word "strike," as did the Wisconsin interpretation,

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2 Section 501 (2), Labor Management Relations Act of 1947, Act of June 23, 1947, Public Law 101, 80th Congress.

broadens it to include **any concerted stoppage of work or interruption of operations * * * by employees.** This definition refers to any stoppage, whether long or short, and doesn't embrace any time limitation.

Under the amended Labor Management Relations Act of 1947, the right to strike is still undiminished even though the act now imposes unfair labor practices on labor unions. Under the new law, Section 13 reads as follows:

> "Section 13. Nothing in this act, except as specifically provided for herein, shall be construed so as to either interfere with or impede or diminish in any way the right to strike, or to effect the limitations or qualifications on that right."

The exception refers to Section 8 (b) of the new law, none of the provisions of which are applicable to the instant case. That Congress intended the Petitioners should have the right to do the things herein enumerated is apparent since it confirmed these rights by the passage of the Taft-Hartley Act. That Act imposed limitations on certain kinds of activities performed by labor unions. In effecting its limitations, the right to do what was here done was not curbed, and in the absence of such a limitation by the Congress on what was here done, that body reaffirmed in the present law the rights ascribed to the Petitioners under the old law.

In **Arthur v. Oaks, 63 Fed. 310,** it was held that it was an error to enjoin the employees from "striking" for the reason that included in the meaning of the word "strike" was the mere concurrence of a number of individuals in the exercise of their inherent right to quit their employment, and that no court ought to interfere with such quitting, unless they were bound by contract.

If these stoppages had occurred in the face of a contractual obligation entered into between the union and the employer containing an absolute prohibition of the right to strike, neither the court nor the employer would hesitate one minute in characterizing such activities as strike activities, regardless of what name or term was used by the union. But in the instant case, both the employer, in not having the protection of such contract, and the court seeking to protect the employer from what appears to be a new and novel means of calling daily strikes, sought to restrain such activities by refusing to assign the term "strike" to such activities.[3]

Whatever the employer might do by way of defense against the actions of the union, or whatever position the employer might find itself in for taking defensive measures against an employee is not involved in this case. What the court below has in effect said is that because employees may commit some act which might justify their employer's discharging them, the court therefore can restrain the employees from exercising such right.

We have treated rights of employer under Sections 7 and 13 separately because of the Wisconsin Court's peculiar approach to what is or is not a strike. Both sections should really be considered together, since Section 13 is a reaffirmation of the rights secured by Section 7, and cautions against any interpretation of Section 7 which may be a limitation on the right to strike. But, labels aside, it is clear that all that is involved here is a concerted activity for mutual aid and protection and in furtherance of legitimate collective bargaining demands. It is respectfully submitted that these concerted activities, considered individually or in series, are within the

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[3] The reason it was necessary for the court to rule on the question of the presence or absence of a strike was that the Petitioners' guilt or innocence of unfair labor practice charges under Sections 111.06 (2) (e) and (h) of the Wisconsin Statutes (See Appendix A) depended on whether their activities were or were not "strikes."

protection of the National Labor Relations Act and therefore not subject to restraint by the states.

C.

The Scope of the Order and Judgment May Not Conflict With the Rights Conferred by the Federal Law.

Whether Sections 7 or 13 of the National Labor Relations Act is involved, the restraining order of the Board and the judgment of the court must be limited to that field of labor relations which the National Labor Relations Act does not regulate, and the order and judgment may not encroach upon the rights of the Petitioners as granted by the Federal Law.

In the case of **Hill v. Florida, 325 U. S. 538, 65 S. Ct. 1373,** this court held that a Florida state statute was unconstitutional under the Commerce Clause because such statute required a collective bargaining representative to be licensed as a prerequisite to bargain, and there was no such restriction to be found in the National Labor Relations Act. The National Labor Relations Board had never assumed any jurisdiction in the matter nor made any determination. The court held that the Florida Statute was inconsistent with the provisions of the National Labor Relations Act and declared it unconstitutional. Similarly, in the case of **Alabama State Federation of Labor v. McAdory, 325 U. S. 450,** this court again indicated that it would pass upon questions relating to conflicts between State Laws and the National Labor Relations Act. The court refused to render a decision in that case only because of uncertainty as to how the State would apply the particular statute and not because of any failure of the National Labor Relations Board to have taken action in any particular case. This Court therefore has definitely taken the position that on questions involving conflict

between state and federal law, it would take the actual action of the State pursuant to State Statute and lay it alongside the provisions of the National Labor Relations Act for the purpose of determining whether any rights secured by that Act have been violated by State action.

We are cognizant of the rule that a state has discretion to deal with illegal concerted efforts in the settlement of industrial conflicts. But it is respectfully submitted that it is within the power of this court to reject a state determination if such determination is so without warrant as to be a palpable evasion of a right secured to the individual. Especially is this true of a right of constitutional rank. There is therefore no legal decision or statutory definition which can be urged as justification for a finding that a one-day work stoppage, or a series of such stoppages, for the purpose of obtaining the ultimate end of a satisfactory collective bargaining agreement, are not concerted activities for the purpose of collective bargaining, as guaranteed by the Federal Law.

A judgment enjoining such activities, and the Statute upon which it is based, are unconstitutional since they are contrary to the Federal laws enacted under the authority of Article I, Section 8 of the United States Constitution.

II.

A STATE CANNOT COMPEL EMPLOYEES ENGAGED IN A LABOR DISPUTE WITH THEIR EMPLOYER TO PERFORM WORK, NOR CAN IT ENJOIN PEACEFUL ASSEMBLY IN LIGHT OF THE THIRTEENTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION.

The order of the Board, as affirmed by the Supreme Court of Wisconsin, directs the union and the individually named officers to cease and desist from engaging in any

concerted efforts to interfere with production by arbitrarily calling union meetings and inducing work stoppages during regularly scheduled working hours, or any other activity, except by leaving the premises in an orderly manner for the purpose of going out on strike. Both the Board and the State Supreme Court excluded the activities engaged herein from the meaning of the term "strike."

As applied to the activities of the Petitioners, this means that Petitioners may not:

1. call union meetings during regularly scheduled working hours;

2. induce the kind of work stoppage engaged in here;

3. picket, boycott, or persuade others not to deal with the employer when not in conjunction with a state-defined strike. ("Any other activity.")

Such restraints preclude the right of free speech, assembly, and compel involuntary servitude. The decision of the State Supreme Court itself has said that the order operates on the individual members of the union, although the individual members are not named as defendants, and the judgment leaves no other conclusion than that the court intended to and did compel union members to perform work against their will, and to deprive them of free speech and assembly. Technically, the refusal of a single member-employee to work part of a day, as has been done in the past, will subject him to punishment for contempt. Picketing by a member without going out on the long, continuous strike that the State Supreme Court had in mind carries the consequence not alone of a fine, but of imprisonment.

The order would in effect chain the employees to their machines, seal their lips, and completely cut off communication with others, even during their off-working hours, for

the purpose of telling them about unfairness of their employer. And the judgment of the State Supreme Court has said in effect that they will enforce such order by fine or imprisonment if the chains are cut or the lips unsealed.

A.

The Order, Judgment, and Any Statute Upon Which They May Be Based, Violate the Thirteenth Amendment.

The judgment bars the discontinuance of, or refusal to report to work by agreement, as has been previously done, under the penalty of fine or imprisonment. This is involuntary servitude and violates the Thirteenth Amendment of the United States Constitution. Justice Brandeis, with Holmes concurring, dissented in **Bedford Cut Stone Company v. Journeymen Stone Cutters Association of North America, 274 U. S. 37,** with reference to the application of the Sherman and Clayton Acts to the activities of labor unions as follows:

> "If, on the undisputed facts of this case, refusal to work can be enjoined, Con ress created by the Sherman Law and the Clayton Act an instrument for imposing restraints upon labor which reminds one of involuntary servitude."

And finally, many year later, in the case of **United States v. Hutcheson, 312 U. S. 219,** that dissenting opinion was adopted by a majority of the United States Supreme Court.

What social justification the State of Wisconsin can be fulfilling by requiring employees to work involuntarily cannot be seen. In **Pollock v. Williams, 322 U. S. 4,** the attempted justification was given that the fulfillment of contracts, and the collection of debts required such action by this court. But this court rejected that theory by declaring that such obligations cannot warrant a suspension of the right to be free from compulsory service and said,

"No state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor."

There are circumstances under which a man may be compelled to work against his will, but this can only be a punishment for a crime or in time of grave national emergency when he may be compelled to render service in behalf of the State against his will, but this kind of servitude the Government reserves only unto itself for the benefit of the governmental unit imposing the compulsion, not for the benefit of another.

In **Henderson v. Coleman, 150 Fla. 185, 7 So. (2d) 117,** the Supreme Court of Florida, refusing to hold members of a union in contempt of an injunction for failing to load or unload trucks, stated that if men were required to load or unload trucks, although there was no contractual relationship, then

"such construction would violate the constitutional provision above referred to. We think it will not be contended that any member of the local could be committed to jail for refusing to load or unload the Collins trucks. * * *

"That service required the performance of manual labor and it is beyond the power of courts to punish one by imprisonment for failure to engage in involuntary servitude.

"* * * We are not advised of any rule of law under which any man in this country may be forced to serve with his labor any other man whom he does not wish to serve."

See also **Stapleton v. Mitchell, 60 Fed. Sup. 51; Carpenters Union v. Citizens Committee, 333 Ill. 225, 164 N. E. 393; Alabama State Federation of Labor v. McAdory, 246 Ala. 1; Lindsay v. Montana State Federation of Labor, 37 Mont. 264, 96 Pac. 127; Great Northern Railway Company**

v. Brousseau, 286 Fed. 414; In Re: Porterfield, 147 Pac. (2d) 15 (Calif.); Ex Parte Blaney, 184 Pac. (2d) 892; Greenwood v. Hotel and Restaurant Employees, 30 So. (2d) 696.

Nor is freedom from involuntary servitude guaranteed only to the individual; it is also assured to the worker in combination with others. If one person may quit his job for any or no reason, there is no reason why two or more cannot do the same, and this is true where the leaving of the job results because of a desire either for a satisfactory collective bargaining agreement, or to attend a union meeting. Single action was early recognized as an inadequate weapon with which to arm the industrial combatant. In the case of **American Steel Foundries v. Tri-City Central Trade Council, 257 U. S. 184,** Chief Justice Taft said:

> "They (labor organizations) were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers an opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court."

But the Wisconsin Court has said that when the stoppage

> "is such a step in a concerted plan to do an unlawful act, it may be enjoined. The quitting and remaining

away from work * * * was done pursuant to a conspiracy to carry out an unlawful plan." (See opinion herein.)

The Wisconsin Court relied on **Aikens v. Wisconsin, 195 U. S. 1945, and Dorchy v. Kansas, 272 U. S. 306**, as its authority.

The State has declared that its Statute makes concerted action of an otherwise lawful act illegal. And so there actually is no concerted plan to do an **unlawful** act as in the **Dorchy** and **Aikens Cases**, but, rather, a concerted plan to do a **lawful** act, the concert of which is illegal. The Wisconsin Supreme Court proceeds on the false premise that the stoppage is illegal. This is not so. The **Dorchy Case** did not involve the right to strike, but involved only the application of a **criminal statute** to an officer of the labor union who had induced a strike for the illegal purpose of collecting a stale wage claim at a time when there was no other labor dispute between the union and the company. The issue in that case did not involve an injunction, but the right of the State to punish for a crime. In addition, the cases relied on by the court below do not place an absolute ban on the right to quit work, in the absence of a criminal conspiracy.

In the face of the social philosophy, as expounded by this court in **American Steel Foundries v. Tri-City Central, etc.**, supra, may the State of Wisconsin declare that the combination of two or more persons to do what one person may lawfully do constitutes a legal wrong? May it say that two persons cannot agree to exercise their right not to work in protest against oppressive conditions and thereby deprive them of this constitutional right? If this is true, such protection from involuntary servitude becomes a mere sham and does not exist for any real purpose. For the exercise of this kind of freedom, as pro-

scribed by the State of Wisconsin, can never lead to the improvement or enlightenment of the working man's status, but only to his degradation and further economic enslavement. It was for the implementation of this kind of right that the Wagner Labor Relations Act was originally enacted, and which this court upheld in **National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1.** To give this restrictive meaning to the right would emasculate the entire letter and spirit of both the Thirteenth Amendment and the National Labor Relations Act. This court termed the right of working men to organize and in concert withhold their labor for the purpose of defending their jobs and protecting their standards of wages and working conditions as "fundamental rights", (**N. L. R. B. v. Jones & Laughlin Steel Corp.**, supra), because such concerted activities are an exercise of liberty and freedom of speech and assembly protected by the Fourteenth Amendment, as well as being preserved by the Thirteenth Amendment.

Further, the State, by limiting the right to refrain from work to individual action, loses sight of the fact that

> "the interdependence of economic interest of all engaged in the same industry has become a commonplace."[4]

And the rule that

> "The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or judicial order of the State." (**A. F. of L. v. Swing**, supra.).

This rule is also applicable to the Thirteenth Amendment. Nor can the State of Wisconsin legally say under

[4] American Federation of Labor v. Swing, 312 U. S. 321.

Section 111.06. (2) (e)[5] that the right of a minority to refrain from work shall be dependent upon a majority of employees of the employer who may have a different viewpoint from the minority. (See **West Virginia v. Barnette, 319 U. S. 624,** and **Alabama State Federation of Labor v. McAdory,** supra.) The judgment and order entered in this case, and the statute upon which it is based, and which the Wisconsin Supreme Court construed, compels working people to labor against their will for the sole benefit of their employer, the Briggs & Stratton Corporation.

B.

The Direction for Judgment, Order and Statute, Upon Which They May Be Based, Violates the Fourteenth Amendment to the United States Constitution.

Concerted activities for the purpose of collective bargaining, or other mutual aid or protection, are rights which are assured by the Fourteenth Amendment. It is submitted that that part of the order which forbids the union from arbitrarily calling union meetings during regularly scheduled working hours is unconstitutional. Here, too, the Board and Court have taken the position that, because the employees may have done something which may justify the employer's discharging them, the court may enjoin the employees from attending a union meeting.

A thorough discussion of the right of free and lawful assembly may be found in **Thomas v. Collins, 323 U. S. 516.** There this court said that a State may not curb that area of free speech and assembly as set apart from regulation by the Constitution.

[5] Section 111.06 (2) (e), Wisconsin Statutes, is involved in this case only because of the term "strike," since if the Petitioners' activities did not constitute a strike under Section 111.06 (2) (h), and the Petitioners were guilty of violating that Section, the Petitioners were also automatically guilty of violating Section 111.06 (2) (e). And their rights under the Thirteenth Amendment then become subject to the rule of the majority.

"Such (state) regulation, however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly. * * * Lawful public assemblies, involving no element of grave and immediate danger to an interest the State is entitled to protect, are not instruments of harm which require previous identification of the speakers."

* * * * * * * *

"The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede."

And Justice Jackson, in a concurring opinion in this same case, had this to say:

"This liberty (peaceable assemblage) was not protected because the forefathers expected its use would always be agreeable to those in authority or that its exercise always would be wise, temperate, or useful to society. As I read their intentions, this liberty was protected because they knew of no other way by which free men could conduct representative democracy."

See also **DeJonge v. State of Oregon, 299 U. S. 353, 81 L. Ed. 278**, and **Hague v. Committee of Industrial Organization, 307 U. S. 496, 83 L. Ed. 1423.**

The mere fact that the meetings conflict with the running of a plant of a private employer is no basis for any injunctive order, except in reasonable apprehension of danger to an organized government. **Herndon v. Lowry, 301 U. S. 242.** The only danger shown here is that of

economic injury to the employer. This is not a substantive evil of such magnitude as to justify a limit to the constitutional rights which Petitioners exercise. **Bakery and Pastry Drivers, etc., v. Wohl, 315 U. S. 769.**

In the case of **Thornhill v. Alabama, 310 U. S. 88,**

> "* * * Danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping proscription of freedom of discussion. * * *"

The right to lawful assembly is the highest kind of right, and such rights may only be curbed when they are abused. This court has held in the case of **Near v. Minnesota, 283 U. S. 697, 75 L. Ed. 1357,** that the appropriate remedy for such abuse is punishment, and that an injunction seeking to prevent the use of the right is violative of the Fourteenth Amendment.

Since what has been done by the Petitioners has been termed a concomitant of a strike, such an interpretation is violative of the Fourteenth Amendment, since under Sec. 111.06 (2) (e) of the Wis. Statutes it conditions the Petitioners' right to peaceful assembly upon the consent of others who may have no interest in the purposes of assembly of a minority. In **West Virginia v. Barnette,** supra, this court said:

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

The State of Wisconsin has decreed that it is illegal for two or more persons to act in concert to refrain from work

or peacefully assemble unless the exercise of such constitutional right has been sanctioned by a majority in the collective bargaining unit. It thereby renders the Constitution inapplicable to a minority.

What the Wisconsin Court did to clothe its injunctive direction with legality as it applied to each constitutional right which the Petitioners claimed was violated, was to find general language in a United States Supreme Court opinion, which struck down the kind of restraint here attempted to be enforced, and through which this court left the door open for proper action in a proper case. On finding such language, the Wisconsin Court said that in each instance the restraint came within such concession and arbitrarily declared that this case was distinguishable from the United States Supreme Court case cited.

III.

SIGNIFICANCE AND EFFECT OF THE INJUNCTION AND STATUTE AS INTERPRETED BY THE WISCONSIN SUPREME COURT, IF PERMITTED TO STAND.

The Wisconsin Statutes, as originally written, were clearly not intended to interfere with or impede the right to strike. But the Wisconsin Supreme Court has emasculated the Statutes in two ways:

1. Although the Wisconsin Legislature expressly exempted from its definition of unfair labor practices concerted interference with production, which is caused by peaceful leaving of the premises, as distinguished from on-the-premise activities (such as a "sit-down strike"),[6] the Wisconsin Court by unrealistically quibbling over the definition of "strike" has not only engaged in judicial legislation, but made a mockery of a basic right.

[6] Section 111.06 (2) (h), Wisconsin Statutes.

2. By holding the activities were concomitants of a strike instead of a strike. The court thus flatly ignored the obvious fact that withdrawal from employment is the strike. This holding was then extended into further error, by saying that the provisions of Section 111.06 (2) (e) which requires secret ballot majority approval for concomitants of a strike were not complied with since the court refused to accept the secret ballot in fact taken because the word "strike" was not used in the motion authorizing the activities (R. 209).

The Wisconsin Court has stated that the order bans "the individual defendants and the members of the Union from 'engaging in concerted effort' to interfere with production by doing the acts instantly involved."

The acts involved are the peaceful leaving of the premises or the peaceful refusal to enter upon the premises. They include the attendance at union meetings. The continuance of these activities is intended until collective bargaining demands are met.

The only exception to this sweeping restraint is the strike which "greater quitting" as defined by the Court implies a "continuous withdrawal until the object of the strike is attained or the strike abandoned." Apparently it is only this element of the definition of the term that the Wisconsin Court said is missing in this case, since the other elements of concerted quit by mutual understanding to enforce compliance with demands are concededly present.

The order, therefore, as construed by the Court, bans any quit with intention to resume employment unless the intention is to suspend work until demands are achieved or abandoned.

It is this forbidden quitting which the order prevents and which is subject to fine or imprisonment.

In other words the Wisconsin Court says to working men:

You may quit your jobs entirely if you do not intend to come back and if you, in fact, do not come back; or you may quit your jobs conditionally if you intend to return when your collective bargaining demands are either met by the employer or abandoned by you; but you dare not quit conditionally if you intend to return without gaining or abandoning your demands. For example: Suppose the employees decided that they would stay out for only one week, since that was the maximum in wages which they could afford to sacrifice at that particular time, and intended to return after that week, even though their demands had not been met and without abandoning those demands, such stoppage on the face of it would be a violation of the order since it does not come within the Wisconsin Court's definition of the term "strike." Yet the employees surely also had an intent to return to work if their demands were met at any time during that week. It is this additional intent which the court has completely overlooked and which is present in this case also, although the periods of the stoppages were shorter. And under the Court's construction of the order and its definition of the term "strike," the State of Wisconsin could institute contempt proceedings and require punishment of the employees within one-half hour after they went out on strike even though at some time during the period of the contemplated strike, and while the contempt proceedings were pending the employer acceded to the demands and signed a contract.

The order, therefore, not only imposes involuntary servitude, compels personal service, punishes for failure to render service, punishes for attempting to render service, and denies the rights of free speech and assembly, but also is so indefinite and vague as to be incapable of understanding as to what may or may not be done under its terms, all

in violation of the Thirteenth and Fourteenth Amendments to the Constitution of the United States.

Additionally, whether there has been violation of the order depends in the final analysis upon the employer. The order places in the employer's hands the ultimate power to cause its violation by refusing to accede to legitimate collective bargaining requests or by prolonging the negotiations! The employer can compel the employees either to stay at work indefinitely or to strike indefinitely, with no middle road available to them.

And doesn't it border on the absurd to say that whether a quit is in violation of the law or of the court order is dependent upon the circumstances under which it is intended to return? Isn't that really the problem of the employee and the employer?

Even if the State has the right to define these tactics as unfair labor practices and had a right to direct remedies such as money damages, it certainly has no constitutional right or authority to say to these employees: "If you quit temporarily with the intention of returning, even though you leave the premises in an orderly fashion, and if you return, without waiving your objection to the conditions which caused you to leave, you shall be fined or imprisoned."

CONCLUSION.

These proceedings come to the attention of this court primarily because of the misinterpretation of the term "Strike" by the Wisconsin Supreme Court. Such interpretation is to take concerted activities which have been historically defined by judicial determination and statutes as strikes and render the federal guarantees of these rights utterly meaningless.

The kind of strike carried on here by the Petitioners is one which the State Administrative Agency and all

judicial branches should encourage, as compared to a long, protracted, full-time strike. By its very nature it causes far less economic hardship on all parties, the employee, the employer, and the consuming public. For the employee it makes possible regular pay checks; for the employer it continues production. For the consumer it makes available a product.

The series of short stoppages can accomplish the same end as the long, continuous strike. By this device the working man can secure for himself, over a long haul what he may not be able to attain over a much shorter, continuous period financed by his own reserves. And so the short-time strike serves to place the working man on a more equal bargaining basis by removing the need for financial resources to support demands at the bargaining table.

The State of Wisconsin has in this case declared that the concerted refusal of working men to perform labor in an effort to bring about better working conditions for themselves is subject to any limitations which the state seeks to impose. Further, the state has restrained the lawful right to peaceful assembly. If our house of freedom is to be a hope for all society and free from oppression, we must be alert against the threat of unconstitutionality in any form reaching in and turning it into a trap for tyranny.

Respectfully submitted,

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APPENDIX A.

Wisconsin Statutes:

"**Section 111.04, Rights of employees.** Employes shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employes shall also have the right to refrain from any or all of such activities."

* * * * * * *

"**Section 111.06, What are unfair labor practices.** (2) It shall be an unfair labor practice for an employe individually or in concert with others:

* * * * * * *

"(e) To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

* * * * * * *

"(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike."

* * * * * * * *

"**Section 111.15, Construction of this chapter.** Except as specifically provided in this chapter, nothing

therein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work; nor shall anything in this chapter be so construed as to invade unlawfully the right to freedom of speech. And nothing in this chapter shall be so construed or applied as to deprive any employe of any unemployment benefit which he might otherwise be entitled to receive under chapter 108 of the statutes."